



February 25, 2000

Ms. Bonnie Lee Goldstein
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.
3000 Bank One Center
1717 Main Street
Dallas, Texas 75201-4335

OR2000-0717

Dear Ms. Goldstein:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132900.

The City of Highland Village (the "city") received a request for information relating to the city's imposition of impact fees, including orders, ordinances and resolutions, a list of accounts into which the fees are deposited, audits and accounting reviews performed within the past twelve months. The requestor specifically seeks information including, but not limited to, initial account balances, deposits, disbursements (which "clearly identify the capital improvement or facility expansion on the approved capital improvement plan"), and current account balances. You advise that the city has released or will release a copy of the city ordinance levying the impact fees. You also advise that there are no documents responsive to the part of the request seeking "copies of any audit and accounting reviews performed within the past twelve months."¹ You seek to withhold the rest of the information responsive to the request under section 552.103 of the Government Code and have submitted representative samples of the information at issue.²

¹You say that no audit or accounting review has been completed within the past twelve months, and that for this period the "audit is currently ongoing and may be finalized in February." You also say that "since the 1999 audit was not completed at the time of the request, the city would argue that it has no responsive documents to the request." We agree that a chapter 552 request applies only to information in existence at the time of the request. *See* Open Records Decision No. 452 (1986).

²In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.103(a) excepts from required public disclosure information

relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party[.]

Subsection (b) of section 552.103 provides that a governmental body is considered to be a party to "litigation" for purposes of the section "until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court." Subsection (c) provides that information is excepted under the section only if the litigation to which the requested information relates "is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information."

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, (Tex. App.-- Austin 1997, no pet.); Open Records Decision No. 588 (1991).

You advise that the requestor, an attorney, has filed a lawsuit on behalf of a development company against the city. The case is styled *Chapel Hill Development, Ltd. v. City of Highland Village et al*, cause number TI-99-01883, and is in the probate court in Denton County. You have provided this office a copy of the Plaintiff's First Amended Petition and Application for Writ of Mandamus in that lawsuit. However, we do not believe you have established that the records at issue relate to that litigation. Therefore, none of the information at issue may be withheld under section 552.103(a).³ It must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

³We note that, in any case, we believe that most if not all of the of the submitted information is subject to mandatory public release pursuant to section 552.022 of the Government Code. Subsection (a)(3) of section 552.022 provides that information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body is public unless that information is expressly made confidential under other law. Gov't Code § 552.022(a)(3). Subsection (a)(5) provides that all working papers, research material and information used to estimate the need for or expenditure of public funds or taxes by a governmental body are public unless that information is expressly made confidential under other law. Gov't Code § 552.022(a)(5). Section 552.103 is an exception under the Public Information Act and is, therefore, not other law that makes the requested information confidential. Moreover, section 395.024(d) of the Local Government Code specifically makes public "[t]he records of the accounts into which impact fees are deposited."

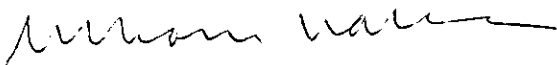
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 132900

Encl. Submitted documents

cc: Mr. Kirk R. Williams
Winstead Sechrest & Minick
Attorneys & counselors
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2199
(w/o enclosures)